

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RONALD LAWRENCE MORTENSEN,

Petitioner,

vs.

DWIGHT D. NEVEN, et al.,

Respondents.

Case No. 2:11-cv-00266-KJD-CWH

ORDER

Ten motions are before the court. The two most important are petitioner's proper-person motion for substitution of appointed counsel (ECF No. 75) and counsel's motion to withdraw as counsel (ECF No. 88). Petitioner complains that counsel would not communicate with him, would not raise a claim of actual innocence, and is working for respondents. Petitioner also has filed documents quoting his counsel's confidential communications to him, which are counsel's work product. The court agrees with counsel's initial response (ECF No. 79), but by now the attorney-client relationship has broken down. The court needs to remove counsel from his representation of petitioner.

The court will appoint replacement counsel, but petitioner should pay heed to the following. The court determined that, in the interests of justice, petitioner would benefit from appointment of counsel. Counsel is expected to use independent, professional judgment in determining which habeas corpus claims are viable and which are not viable. Counsel also is expected to give advice about the state of petitioner's case, even if that advice is blunt and unfavorable to petitioner. Everything in the court's docket shows that current counsel performed his duties well. If the

1 relationship between petitioner and replacement counsel breaks down because petitioner again
2 destroys the attorney-client relationship, the court might determine that the interests of justice no
3 longer require petitioner to be represented by counsel.

4 Petitioner has filed a motion by petitioner adding declaration (ECF No. 76), motion by
5 petitioner adding second declaration (ECF No. 80), and a motion by petitioner adding witness
6 declaration (ECF No. 89). Petitioner's proper-person motion for substitution of appointed counsel
7 (ECF No. 75) and counsel's motion to withdraw (ECF No. 88) have convinced the court to remove
8 current counsel and to appoint replacement counsel. The court does not need additional
9 declarations, and the court denies these motions.

10 Petitioner has filed a motion for sanctions (ECF No. 77) against his attorney. The court
11 denies this motion.

12 Petitioner has filed an ex parte motion adding request for investigator (ECF No. 92). The
13 court denies this motion because the court will appoint replacement counsel, who will determine if
14 an investigator is necessary.

15 Counsel has filed a request for a ruling, or a hearing (ECF No. 95). The court grants this in
16 part with respect to a ruling, which it is giving now. A hearing is unnecessary.

17 Before the litigation between petitioner and counsel started, petitioner filed a motion to
18 substitute parties (ECF No. 71). Petitioner seeks to change the respondent from the warden of the
19 High Desert State Prison to the warden of the Lovelock Correctional Center. This motion is moot
20 because petitioner now is held at the Northern Nevada Correctional Center. Replacement counsel
21 may renew this motion, if necessary.

22 Respondents have filed a motion to extend time (ECF No. 78). Respondents want a delay in
23 filing a response to the second amended petition (ECF No. 72). The court grants this motion.
24 Respondents will not need to file an answer or other response to the second amended petition, or to
25 any subsequent amended petition filed by replacement counsel, until ordered by the court.

26 Finally, in counsel's response (ECF No. 83) to the motion by petitioner adding second
27 declaration (ECF No. 80), counsel objects to petitioner's disclosure of counsel's opinion work
28 product. Response, at 3-4 (ECF No. 83). Counsel asks the court to strike the motion, to order

1 opposing counsel and his clients to destroy all copies of the motion in their possession, and to order
2 opposing counsel and his clients not to use in any way the information contained in the motion. Id.,
3 at 5. Counsel did not file this request as a motion, respondents have not responded to it, and
4 respondents have noted that they deliberately were staying out of the dispute between petitioner and
5 counsel (ECF No. 96). Counsel raises an important issue, and the court is inclined to grant
6 counsel's request, but the court will give respondents an opportunity to respond first.

7 IT IS THEREFORE ORDERED that the motion for substitution of appointed counsel (ECF
8 No. 75) is **GRANTED**.

9 IT IS FURTHER ORDERED that the motion to withdraw as counsel (ECF No. 88) is
10 **GRANTED**. The representation of petitioner by Mario Valencia is **TERMINATED**.

11 IT IS FURTHER ORDERED that the clerk of the court shall forward a copy of this order to
12 the CJA Coordinator, who shall locate substitute counsel for petitioner. The clerk of the court also
13 shall send a copy of this order to petitioner himself, Ronald L. Mortensen, #54506, Northern Nevada
14 Correctional Center, P.O. Box 7000, Carson City, NV 89702.

15 IT IS FURTHER ORDERED that the motion by petitioner adding declaration (ECF No. 76)
16 is **DENIED**.

17 IT IS FURTHER ORDERED that the motion by petitioner adding second declaration (ECF
18 No. 80) is **DENIED**.

19 IT IS FURTHER ORDERED that the motion by petitioner adding witness declaration (ECF
20 No. 89) is **DENIED**.

21 IT IS FURTHER ORDERED that the ex parte motion adding request for investigator (ECF
22 No. 92) is **DENIED**.

23 IT IS FURTHER ORDERED that the motion for sanctions (ECF No. 77) is **DENIED**.

24 IT IS FURTHER ORDERED that the request for a ruling, or a hearing (ECF No. 95) is
25 **GRANTED** in part with respect to the issuance of this order. The request is **DENIED** in part with
26 respect to holding a hearing.

27 IT IS FURTHER ORDERED that the motion to substitute parties (ECF No. 71) is **DENIED**
28 as moot.

1 IT IS FURTHER ORDERED that respondents' motion to extend time (ECF No. 78) is
2 **GRANTED.** Respondents need not file an answer or other response to the second amended petition
3 (ECF No. 72), or to any subsequent amended petition filed by replacement counsel, until ordered by
4 the court.

5 IT IS FURTHER ORDERED that respondents will have fourteen (14) days from the date of
6 entry of this order to respond to the request of counsel in his response, at page 5 (ECF No. 83), that
7 the court strike the motion by petitioner adding second declaration (ECF No. 80), order opposing
8 counsel and his clients to destroy all copies of the motion in their possession, and order opposing
9 counsel and his clients not to use in any way the information contained in the motion.

10 DATED: September 29, 2016

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13 KENT J. DAWSON
14 United States District Judge
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